IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6804 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JAYKANT ALIAS JAGAN SON OF PARASHRAM RAJPUT (MADRASI)

Versus

COMMISSIONER OF POLICE

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Appearance:

1. Special Civil Application No. 6804 of 2002

MS BANNA S DUTTA for Petitioner No. 1

Mr.V.M.Pancholi, AGP for Respondent No. 1-3

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/02/2003

ORAL JUDGEMENT

1. The detention order dated 11-7-2002 passed by the Police Commissioner, Ahmedabad City, against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution.

2. The grounds of detention served and supplied to the detenu under Sec.9(1) of "PASA", inter alia indicate that six criminal cases are registered against the petitioner in between the period 3-1-2002 and 8-6-2002 at Nashabandi Police Station That in each case Indian made foreign liquor has been seized from the possession of the petitioner. The said cases are pending investigation.

3. That in consideration of the aforesaid material, the detaining authority having been satisfied that the bootlegging activities of the petitioner is prejudicial to public health and public order has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activity and as such the impugned order is passed.

At the time of hearing of the petition, learned Advocate for the petitioner submitted that the petitioner was in judicial custody at the relevant time in connection with six cases. Out of the said six cases, the petitioner was released on bail in the case at serial no.4. So far as the cases at serial nos.2,3,5 and 6 are concerned, the petitioner was in judicial custody while in respect to case at serial no.1, the petitioner was in police custody.

4. The petitioner has challenged the impugned order on numerous grounds. It is mainly contended at the Bar on behalf of the petitioner that the impugned order suffers from the vice of non application of mind, inasmuch as before passing the impugned order, the detaining authority has merely mentioned the fact that the petitioner is in judicial custody in connection with cases at serial nos.2, 3, 5 and 6 but he has failed to state as to why it is still necessary to detain the petitioner. On scrutiny of the grounds of detention, it appears that despite registration of cases against the petitioner, the petitioner has been continuing his bootlegging activities. However, no where in the grounds of detention, the detaining authority has stated that though the petitioner was in judicial custody the petitioner is likely to obtain bail and continue to indulge into antisocial activities.

5. Learned Advocate for the petitioner has placed reliance on the decision of the Apex Court in the case of Amritlal & Ors. vs. Union Government and others, AIR 2000 SC 3675 wherein it has been observed as under:

"4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090: 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

" Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090: 1986 Cri LJ 1959) (supra) that there is `likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the likelihood of his moving an application for bail' which is different from ` likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being

released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order."

6. Under these circumstances, having considered the aforesaid decision, I am constrained to hold that non application of mind on the part of the detaining authority has vitiated the subjective satisfaction rendering the detention order invalid. In that view of the matter, the impugned order of detention deserves to be quashed and set aside on this ground alone.

7. On the basis of the foregoing discussion, the petition is allowed. The order of detention dated 11-7-2002 passed by the Police Commissioner, Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner-detenu-Jaykant alias Jagan son of Parashram Rajput(Madrasi) is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

(P.B.Majmudar,J.))

stanley-pbm..